

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL STEWART,

Plaintiff,

vs.

CITY OF SAN DIEGO; PAM ROWLETT;  
SCOTTY ODOM; JOSE CONDE; JR  
COPELAND; J KELLY; MICHAEL  
WALLACE; ADAM SCHROM; DANIEL  
STANLEY; DENNY KREMER; KEVIN  
HOLYFIELD; JOHN HUYS; THOMAS  
McGRATH; STEVEN WITT; MICHAEL  
BROWN JR.; DONA HUFFORD; WALTER  
J. RUSSELL; GLENDA PATRICK;  
A. DOHERTY; WENDY DAVISSON;  
DOUG SENSABAUGH; and

Defendants.

CASE NO. 09cv844-IEG(WMc)

Order Denying Plaintiff's Motion  
to Alter or Amend Judgment

By order filed December 6, 2010, the Court granted summary judgment in favor of Defendants on all of Plaintiff's remaining claims in this case. On December 16, 2010, Plaintiff lodged with the Clerk's Office for filing a one-half inch binder of materials, the top page<sup>1</sup> of which

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<sup>1</sup>Because the manner in which the materials were submitted will not be apparent from the record once the Plaintiff's papers are scanned and uploaded to the CM/ECF system by the Clerk's Office, the Court makes note of such here. The binder submitted by Plaintiff contained pockets inside the front and back covers. Inside the front pocket of the binder were six separately stapled, handwritten, memoranda, some of which contained exhibits. Inside the three-hole punch portion of the binder was a Table of Contents and Exhibits A-M, most of which contain numerous subparts. Inside the back pocket of the binder was a CD, labeled "Tape #J2050, 2-23-09, 2249 Hrs. 1183-23152CR at National Av/ Sigsbeest." The CD was further labeled "Exhibit B." In that pocket was also a manilla envelope containing a four-page document entitled "4<sup>th</sup> Amendent Complaint Fed. Rule 15(f)" in which Plaintiff seeks to add claims against six new Defendants

1 was entitled “In support of defendants motion to dismiss Fed. Rule 26, Fed. Rule 60 in Support of  
 2 Relief of Judgment.” In addition, on December 30, 2010, Plaintiff lodged with the Clerk for filing  
 3 a doctor’s report and an additional declaration.<sup>2</sup> The Court treats Plaintiff’s papers as a motion to  
 4 alter or amend the judgment under Fed. R. Civ. P. 59(e). For the reasons explained below, the  
 5 Court DENIES Plaintiff’s motion.

### 6 Discussion

7 Because Plaintiff’s papers were filed within twenty-eight days after the Court entered  
 8 judgment, Plaintiff’s motion is properly characterized as arising under Rule 59(e) rather than Rule  
 9 60(b). See American Ironworks & Erectors, Inc. v. North American Const. Corp., 248 F.3d 892,  
 10 898-99 (9<sup>th</sup> Cir. 2001) (noting that a motion for reconsideration filed within the time period set  
 11 forth in Rule 59(e) is treated as a motion to alter or amend the judgment under Fed. R. Civ. P.  
 12 59(e), while a motion filed beyond that time period is treated as a Rule 60(b) motion for relief  
 13 from a judgment or order). The Court may grant a motion to alter or amend judgment under Rule  
 14 59(e)<sup>3</sup> under the following circumstances:

15 “(1) [T]he district court is presented with newly discovered evidence, (2) the district  
 16 court committed clear error or made an initial decision that was manifestly unjust,  
 or (3) there is an intervening change in controlling law.”

17 Duarte v. Bardales, 526 F.3d 563, 567 (9<sup>th</sup> Cir. 2008) (quoting Zimmerman v. City of Oakland, 255  
 18 F.3d 734, 740 (9<sup>th</sup> Cir.2001)). Where a litigant seeks relief based upon new evidence, the party  
 19 must show (1) the evidence was discovered after judgment was entered, (2) the evidence could not  
 20 be discovered earlier through due diligence, and (3) the newly discovered evidence is of such  
 21 magnitude that it likely would have changed the outcome of the proceedings. Dixon v. Wallowa  
 22 County, 336 F.3d 1013, 1022 (9<sup>th</sup> Cir. 2003).

23 In the current papers, Plaintiff disputes the authenticity of the dispatch tapes and other  
 24 \_\_\_\_\_

25 based upon their alleged falsification of evidence. The envelope also contains purported  
 26 summonses and proofs of service of the 4<sup>th</sup> Amended Complaint.

27 <sup>2</sup>Along with the declaration Plaintiff filed on December 30, 2010, Plaintiff lodged two  
 jump drives which purportedly contain GPS records for the Court’s review.

28 <sup>3</sup>The standard for reconsideration under Rules 60(b) and 59(e) are substantially similar.  
United Nat’l Ins. Co. v. Spectrum Worldwide, Inc., 555 F.3d 772, 780 (9<sup>th</sup> Cir. 2009).

1 evidence he received from the City in response to his subpoenas and discovery requests pertinent  
2 to his February 23, 2009 car accident. Plaintiff has submitted copies of Defendants' moving and  
3 reply documents and declarations regarding their summary judgment motion, with particular  
4 sections highlighted. Much of what Plaintiff now submits was previously considered by the Court  
5 in ruling on Defendants' motion for summary judgment. Plaintiff repeats arguments he asserted in  
6 both his written papers and oral argument in opposition to the Defendants' summary judgment  
7 motion. None of this previously-considered evidence warrants relief under Rule 59(e).

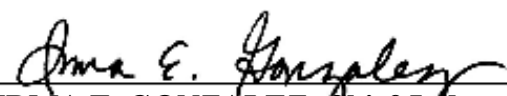
8 Plaintiff has submitted several pieces of evidence he did not previously file in opposition to  
9 the Defendants' summary judgment motion, including a report regarding Plaintiff's mental health  
10 treatment several months following the automobile accident, what appears to be a portion of a  
11 report from neurosurgeon Tyrone Hardy regarding his neck injury, and purported GPS records.  
12 Neither the mental health report nor Dr. Hardy's report bear upon Defendants' liability for the  
13 conduct alleged by Plaintiff. In addition, the purported GPS record files on the jump drives  
14 Plaintiff submitted on December 30, 2010 are voluminous, and Plaintiff does not point to any  
15 particular portion of those files in support of his claims. The Court has no duty to review these  
16 electronic records to try to discern evidence that may entitle Plaintiff to relief from judgment.  
17 Plaintiff makes no claim that this evidence was discovered after the Court entered summary  
18 judgment, and does not explain why the evidence was not submitted in opposition to Defendants'  
19 summary judgment motion. In short, Plaintiff has failed to demonstrate the Court should alter or  
20 amend the judgment the Court entered in this case on December 6, 2010.

21 **Conclusion**

22 For the reasons explained herein, Plaintiff's papers are construed as a motion to alter or  
23 amend the judgment under Fed. R. Civ. P. 59(e). Plaintiff's motion is DENIED. The Court will  
24 not accept for filing any additional requests for reconsideration by Plaintiff.

25 **IT IS SO ORDERED.**

26 **DATED: January 10, 2011**

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28 **IRMA E. GONZALEZ, Chief Judge**  
**United States District Court**